

Board of County Commissioners Agenda Request

Date of Meeting: October 25, 2005

Date Submitted: October 19, 2005

To: Honorable Chairman and Members of the Board

From: Parwez Alam, County Administrator *PA*
Vincent Long, Assistant County Administrator *va*

Subject: Approval of Memorandum of Understanding Regarding Proposed Incentive Package for "Project North" Corporate Relocation.

Statement of Issue:

This agenda item requests Board approval of a Memorandum of Understanding for the proposed incentive package of the "Project North" corporate relocation to Leon County (Attachment #1).

Background:

During their regular meeting on June 28, 2005, the Board accepted a report from the Economic Development Council (EDC) regarding their proposed corporate relocation incentive proposal for a Canadian-based research and manufacturing company (Project North). This proposal included state and local incentives of nearly \$5 million for the corporate relocation to Leon County that would result in the creation of over 150 high paying "targeted industry" jobs. At that time, the Board also directed staff to negotiate new "direct" relocation incentives of up to \$1.605 million (Attachment #2).

For the past three months, the EDC has pursued negotiations to secure Project North's relocation to Leon County in cooperation with the County, the City and Innovation Park staff. This agenda item provides the Board with an overview of the new "direct" County incentives, totaling \$1.605 million, which have been discussed with the Company. Significantly, this item requests Board approval of a Memorandum of Understanding (MOU) between the County, City, Leon County Research and Development Authority (LCRDA or Innovation Park) and Danfoss Turbocor Compressor's Inc., (Company).

Analysis:

The total incentive package that is being considered for Project North, and is partly detailed in the attached MOU, is currently over \$7 million, and includes the following key program elements:

- \$1,050,000 in Qualified Target Industry Incentive (QTI) Program (*existing incentive*)
- \$200,000 in Quick Response Training (QRT) Program (*existing incentive*)
- \$650,000 from Enterprise Florida in direct incentives (*existing incentive*)
- \$270,000 in Leon County/Tallahassee Enterprise Zone incentives (*existing incentive*)
- \$300,000 County/City Targeted Business Pilot (TBPP) Program (*existing incentive*)
- \$100,000 additional from TCC for QRT initiatives (*existing incentive*)

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- \$1,605,000 from the County (*new direct incentive*)
- \$1,605,000 from the City (*new direct incentive*)
- \$450,000 from Innovation Park (*new direct incentive-not including land value*)

The reason for the increase in total incentives stems from the corresponding increase in QTI program benefits being offered to the Company. As detailed further in a separate agenda item, the Company is expected to qualify for up to \$1,050,000 in QTI incentives (previous estimates were for only \$270,000). In addition, Innovation Park has now committed \$450,000 in direct or "cash" incentives to this project, in addition to dedicating up to three parcels valued at over \$1 million.

Memorandum of Understanding:

The purpose of the proposed MOU is to codify a mutual understanding of the incentives that will be offered to the Project North firm for their relocation to Leon County. In turn, the MOU outlines the performance guarantees, primarily for job creation, that will be adhered to by the Company for receipt of these direct incentives from the State, County, City and LCRDA. In addition, the MOU includes "clawback" provisions for each year that the performance guarantees are not met. These incentives, performance guarantees and clawback provisions are further detailed in the following sections. Once approved, the MOU will serve as an important trigger enabling a series of related future actions to be taken by the partners. Those future actions will include some of the following:

- Contract between the Company and the state regarding the "Quick Action Closing Fund,"
- Contract between the Company and the state for the Qualified Targeted Industry Program,
- Long term lease between the LCRDA and the Company for their facility at Innovation Park,
- Interlocal agreement between the County, City and LCRDA regarding "ownership" of the building at Innovation Park.
- Full corporate relocation with Direct Incentives from the County, City and Innovation Park.

Performance Measures:

Upon approval of the memorandum, the Company agrees to relocate its corporate headquarters, research, testing and manufacturing facility to Leon County. Additionally, the Company shall create at least 90 new jobs by the end of their first year of operation in and at least 150 new jobs by the end of their third year. The MOU also requires the Company to hire 90% of its direct labor pool and 70% of its corporate personnel from the Tallahassee Metropolitan Service Area. The agreement requires the Company to provide comprehensive healthcare benefits to each employee and to pay for at least 75% of the total benefit cost. The MOU also requires the Company to forge partnerships with Florida A&M University, Florida State University, Tallahassee Community College, Lively Technical School and Leon County Schools toward creating these jobs.

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Under the MOU, the Company also agrees to relocate to a facility to be constructed within Innovation Park and agrees to enter into a long-term lease of this property. Finally, the Company agrees not to move or relocate from the facility, to any location outside Innovation Park, without the prior written approval of the City and County.

County "Direct" Incentive Overview:

In accordance with previous Board direction, the MOU provides for direct incentives from Leon County totaling \$1.605 million. The City's direct incentive contribution also totals \$1.605 million and matches the County's contributions as further detailed in this section. Accordingly, the County (and City) contribution is split with \$813,500 committed towards construction of a building to be leased to the Company (as detailed in the next section). The remaining \$791,500 is to be provided as direct, or cash, incentives to the Company in accordance with the following schedule:

- \$233,250 upon execution of "all agreements," (*please note: this includes execution of this MOU, AND execution of the interlocal agreement, the lease between the Company and the LCRDA, the interlocal agreement between the County, City and LCRDA, and other performance contracts between the Company and the state for QTI and other incentives.*)
- \$279,125 within five (5) days of commencement of the lease, and
- \$279,125 upon the first anniversary of the execution of "all agreements" (as reflected above)

Building Construction and Lease Overview:

According to the MOU, the LCRDA and the Company will enter into a 20-year long-term lease for the land and building. The building, estimated at approximately 65,000 square feet, will be constructed by the LCRDA utilizing \$813,500 dedicated by the County and \$813,500 from the City. The LCRDA will dedicate \$450,000 to the building construction as well as three contiguous parcels within Innovation Park (estimated value over \$1 million) to the Company.

Although the terms and conditions of this partnership will be further established in a future interlocal agreement between the County, City and LCRDA, the concept is for a "triple-net" lease of the facility to the Company with an option to buy the building. Essentially the building's "ownership" will be split between the partners based on their investment or approximately 25% to the County, 25% to the City and 50% to the LCRDA. Any proceeds remaining after the sale of the building would be divided according to the ownership terms of the interlocal agreement. Similarly, should the Company cease its operation, each partner would be liable for proportionate debt service payment while a new tenant is being identified in order to maintain their "ownership" status. Initial LCRDA estimates indicate that annual debt service would total approximately \$200,000.

It is important to note that negotiations on this building "ownership" issue are in their preliminary stages. Upon Board approval of the MOU, staff will continue to negotiate an interlocal agreement on this part, with a future agenda item to be presented to the Board for their approval. Moreover, the MOU only signifies the County's intent to commit funding toward the construction of a facility at Innovation Park. It does not delineate all of the specific elements of a future interlocal agreement.

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Performance Guarantees or "Clawback" Provisions:

According to Board direction, significant "clawback" provisions, or performance guarantees, have been tied to the direct incentives being offered to the Company through the MOU. As detailed above, the first \$813,500 will be committed to construction of a building for the Company's use. As such, the building itself will remain in proportionate County "ownership", should the Company cease to exist. Therefore, the County could regain a portion, or all, of its initial investment through the future sale of the facility (to either the Project North Company or a separate entity).

The County's direct incentives to the Company are also "guaranteed" through the Company's machinery and equipment. According to the MOU, the Company's machinery and equipment at Innovation Park (estimated market value of \$6 million and owned outright by the Company) would revert to County and City ownership should the Company cease operation for 120 days during their first five years of operation. Although the resale value of such used machinery is estimated to be far less, the County (and City) would be able to recoup a portion of its direct incentive investment through the disposition of these assets.

In addition to the above clawback provisions, the MOU also includes non-performance penalties during the Company's first ten years of operation. For example, the performance guarantees require payment should any of the following events occur:

- \$1,000 to the County (and City) for each FTE not offered comprehensive benefits,
- \$1,000 to the County (and City) for each FTE below 80 during the first three years of operation (the target is for the Company to have 90 employees during this time), and
- \$1,000 to the County (and City) for each FTE below 140 during years 4 through 10 of operation (the target is for the Company to have 150 employees during this time).

It is important to note that this MOU is the only legal remedy requiring payment of the above penalties for nonperformance. Execution of a performance bond or letter of credit by the Company, while discussed during the negotiation process, was not agreed upon for the MOU.

In an effort to streamline Company reporting requirements, the MOU utilizes performance targets, such as for job creation, which the Company is already required to report to the state each year as part of their QTI and Quick Action Closing Fund contracts. As such, the County will receive regular updates on performance not only from the Company but through state program monitoring, as well.

Key Differences Between MOU and Previous Incentive Proposal:

There are two primary differences between the terms of this MOU and the relocation incentive proposal that was presented to the Board by EDC staff in June. First, the June proposal included a payment schedule with County disbursements to the Company (for up to \$1.6 million) to be made over five years, based on the Company's successful job creation performance. However, the proposed MOU provides for all of the County direct incentives to be made during the first two years of document execution with a series of strong "clawbacks" to the Company should they not perform to the standards detailed in the contract.

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Additionally, the June proposal detailed that all County cash incentives would be delivered directly to the Company. However, the proposed MOU splits the County's total \$1.6 million in direct incentives between \$791,500 in direct payments to the Company and \$813,500 toward building construction, each with significant clawbacks toward hard assets such as the building and equipment.

Recommendation / Overview of Upcoming Actions:

At this time, staff is recommending approval of the proposed Memorandum of Understanding between the County, City, LCRDA and Danfoss Turbocor Compressors, Inc. Significantly, the MOU has already been approved by the Company and is expected to be approved by the City Commission during their regular meeting on October 26, 2005.

Upon Board approval, staff will continue to negotiate an interlocal agreement with the City and LCRDA regarding the construction, lease and ownership of the proposed corporate headquarters facility. It is anticipated that an agenda item regarding the interlocal agreement will be presented for the Board's approval before their winter recess. Additionally, staff will continue to coordinate with the EDC toward the full relocation of the Project North Company to Leon County. As the Company's formal announcement of relocation will be coordinated by the Governor's office and the EDC, the County will be advised in advance of any announcement ceremony by EDC staff to insure County participation at such an event.

Options:

1. Approve the Memorandum of Understanding between the County, City, Leon County Research and Development Authority, and Danfoss Turbocor Compressors, Inc.
2. Do not approve the Memorandum of Understanding.
3. Board direction.

Recommendation:

Option #1.

Attachments:

1. Memorandum of Understanding between the County, City, Leon County Research and Development Authority and Danfoss Turbocor Compressors, Inc.
2. June 28, 2005 Agenda Item: "Consideration of EDC Proposed Incentive Package for Corporate Relocation to Leon County."

MEMORANDUM OF UNDERSTANDING**PART I: PARTIES**

This Memorandum of Understanding ("MOU") is entered into by and among the City of Tallahassee ("City"), Leon County, Florida ("County"), Leon County Research and Development Authority having its principal place of business at 1736 West Paul Dirac Drive, Tallahassee, Florida 32310 ("LCRDA"), and Danfoss Turbocor Compressors Inc. having its principal place of business at 1850 Trans-Canada, Dorval, Quebec H9P SN4 ("Company"), for the mutual understanding of establishing a corporate headquarters, research, testing, and manufacturing facility located at Parcels 1D,2D,3D of Innovation Park (hereinafter collectively referred to as the "Parties").

PART II: DEFINITIONS

"All Documents" means this Memorandum of Understanding; Quick Action Closing Fund contract; Qualified Targeted Industry program contract; the inter-local government agreement; and the lease between the Company and the Leon County Research and Development Authority.

"Full Time Equivalent Employee ("FTE")" means one person working a total of 30 hours or more per week for 26 weeks or more per year.

"Job" means employment for one FTE.

"Direct Labor" means a job requiring some manual labor and moderate technical knowledge.

"Corporate Headquarters Personnel" means not Direct Labor.

"Comprehensive Benefits" means healthcare benefit plan provided by a company accredited by National Committee for Quality Assurance American Accreditation HealthCare/Commission/URAC or a healthcare benefit plan that utilizes healthcare providers accredited by the Joint Commission on Accreditation of Healthcare Organizations, and the Accreditation Association for Ambulatory, Health Care Community Health Accreditation Program Consumer Coalition for Quality Health Care. The Company shall purchase 75% or more Comprehensive Benefits for each FTE.

"First Year of Operation" means the period of time beginning 90 days after the commencement of the lease term and ending 365 days later.

"Third Year of Operation" means the period of time beginning two years after the First Year of Operation and ending three years after the First Year of Operation.

"Cessation of Operation" is defined as the Company having fewer than twenty-five FTE's at the facility in Innovation Park.

PART III: PROJECT DESCRIPTION

The Company shall re-locate its corporate headquarters, research, testing, and manufacturing facility to Tallahassee, Leon County, Florida. The Company shall create a minimum 90 jobs by the end of the First Year of Operation and 60 more jobs by the end of the Third Year of Operation in Leon County. The jobs will have an average wage in excess of 150% of the Leon county average salary as defined by Enterprise Florida, Inc. All full time employees will receive Comprehensive Benefits. The Company will forge strategic partnerships with the community that could include entities such as Florida Agricultural and Mechanical University - Florida State University College of Engineering, Tallahassee Community College, Lively Technical Institute, and Leon County Schools. The Company shall hire at least 90% of its Direct Labor from the Tallahassee Metropolitan Statistical Area ("TMSA"). The Company shall hire at least 70% of its new Corporate Headquarters Personnel from the TMSA unless qualified personnel cannot be found within the TMSA.

PART IV: TERMS AND CONDITIONS OF RELOCATION**§3.01 The Quick Action Closing Fund and Qualified Targeted Industry Program**

This project is induced by the Qualified Targeted Industry program (QTI) and Quick Action Closing Fund. The Company has applied to the QTI. The City and County commit their full financial support for the local government portion of the QTI program by resolution. The Company's commitment to come to Tallahassee, Leon County, Florida is contingent up QTI funding and Quick Action Closing program funding.

§3.02 Performance Guarantees

The Company shall provide comprehensive benefits for every FTE. If comprehensive benefits are not provided to all FTEs, the Company shall pay \$1,000 per uncovered FTE per year to each the City and County each year of non-compliance. These payments will be made annually at the end of each year of non-compliance. The number of employees and wage averages shall be reported in accordance with the procedures and policies of the Florida Qualified Targeted Industry program laws and rules.

The Company shall provide 90 FTE during any of the first three years of operation, If at least 80 FTE are not provided, then the Company shall pay \$1,000.00 to the City and \$1,000.00 to the County per each FTE below 80. These payments will be made annually at the end of each year of non-compliance. The number of employees and wage averages shall be reported in accordance with the procedures and policies of the Florida Qualified Targeted Industry program laws and rules.

The Company shall provide 150 FTE during any of the years four through ten of operation, If at least 140 FTE are not provided, then the Company shall pay \$1,000.00 to the City and \$1000.00 to the County per each FTE below 140. These payments will be made annually at the end of each year of non-compliance.

If the Company ceases operation for more than 120 consecutive days during the first five years of operation then the machinery and equipment at the Innovation Park facility may

be sold to reimburse the City and County direct incentive payment.. If the cessation at the Innovation Park location occurs during the first two years of operation the City and County may sell machinery and equipment of the Company to reimburse the governments for the full amount of the direct incentives. For each year of operation three through five the reimbursement of the direct incentive requirement to the County and City will be reduced by \$160,000.00 each. After five years of operation no reimbursement of the direct incentive will be required. A natural or man-made disaster that causes a work stoppage does not constitute cessation of operation under this agreement.

§3.03 Direct Incentives.

With in five days of all agreements being executed the City will convey to the Company \$233,250.00. With in five days of all agreements being executed the County will pay to the Company \$233,250.00.

Within five days of commencement of the lease, the City will pay to the Company \$279,125.00. Within five days of commencement of the lease, the County will pay to the Company \$279,125.00.

Upon the first anniversary of the signed agreements, the City will pay to the Company \$279,125.00. Upon the first anniversary of the signed agreements, the County will pay to the Company \$279,125.00.

§3.04 Lease.

The LCRDA and the Company shall execute a lease for the land and building for a term of 20 years. The lease language will contain an option for the Company to buy the building on terms and conditions to be negotiated. The rent will be set forth in the lease. The lease is contingent upon the LCRDA obtaining revenue bond financing. The financial strength of the Company plays an essential role in this financing.

The Company shall pay for the taxes, maintenance, repairs, and improvements to the facility. The Company shall pay common area fees which are paid by all tenants in Innovation Park. Permission to expand the facility must be approved by the LCRDA.

The City commits \$813,500.00 towards the construction of buildings leased to the Company. The County commits \$813,500.00 toward the construction of buildings leased to the Company.

The LCRDA shall provide \$450,000.00 toward the building costs for a new corporate headquarters, research, testing, and manufacturing facility. LCRDA shall provide parcels 1d and 2d with the lease of the building with an option for a lease on parcel 3d to accommodate future expansion.

§3.05 Maintain Location of Project.

The Company agrees to not move or relocate the facility to any location outside Innovation Park, without obtaining the prior written approval of the City and County within the term of this agreement.

Part V: OTHER CONSIDERATIONS AND CONDITIONS**§4.01 Documentation Costs.**

None of the costs, including attorney's fees for document preparation or review, will be the responsibility of the Company, except those incurred by the Company for its own counsel and internal corporate review.

§4.02 Severability.

If any provision of this MOU or its application to any person or circumstance is held invalid by any court of competent jurisdiction, such invalidity will not affect other provisions of this MOU.

§4.03 Counterparts.

This MOU may be signed in any number of counterparts, each of which will be an original, but all of which taken together will constitute one agreement.

§4.04 Governing Law and Venue

This MOU shall be governed by; construed according to the laws and regulations of; and subject to the jurisdiction of the State of Florida.

§4.05 Financial Review.

The Parties acknowledge that the Company must demonstrate the financial capacity to satisfy the requirements of an Industrial Revenue Bond under Florida State Law.

§4.06 No Legal Actions.

The Company warrants there are no legal actions, suits, or other proceedings, pending or threatened, before any court or administrative agency, which, if determined adversely to the Company, would have a material adverse effect on the financial condition of the Company.

§4.07 Authorization of Representative Signing for the Benefited Business.

The Company, by and through an officer or other representative accepting this MOU by signing below on the Company's behalf, has entered into this MOU with the full knowledge and authorization of the Company under proper procedures prescribed by the articles of incorporation, bylaws, and other documents applicable to the corporate governance of the company.

ACCEPTANCE PROVISIONS

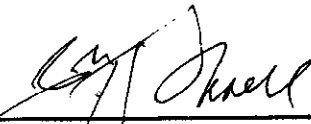
The Parties acknowledge they have read and understand this MOU and agree to its provisions, and that it will be effective on the date when all parties have signed.

City of Tallahassee

Leon County Florida

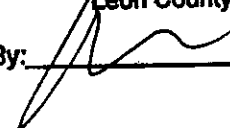
By: _____
Mayor John Marks

(Date)

By: 
Chairman Cliff Thael
10/26/05

(Date)

APPROVED AS TO FORM
LEON COUNTY ATTORNEY'S OFFICE
Leon County, Florida

By: 

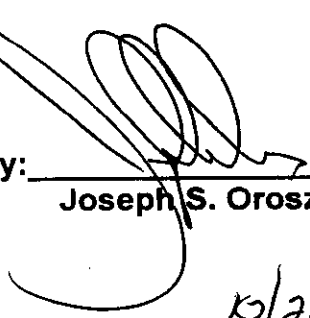
(Date)

Leon County Research and
Development Authority

Danfoss Turbocor Compressors Inc.

By: _____
Thomas Barron, Chairman

(Date)

By: 
Joseph S. Orosz, President
10/21/05

(Date)

ATTEST:
Bob Inzer, Clerk of the Court
Leon County, Florida

BY: 

(Date)